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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/681,977	10/09/2003	GARRY TSAUR		7798

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JOE NIEH
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EXAMINER

WALCZAK, DAVID J

ART UNIT	PAPER NUMBER
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3751

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/17/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/681,977

Applicant(s)

TSAUR, GARRY

Examiner

David J. Walczak

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 March 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) 4-27 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

DETAILED ACTION

Response to Amendment

It is noted that claims 16, 17 and 19-27 have been withdrawn (see the previous office action, it is further noted that the previous office action inadvertently neglected to disclose that new claim 16 is also directed to a non-elected embodiment, however as claim 16 also defines a hole in the housing, this claim is obviously also considered to be non-elected). However, the status identifiers for these claims do indicate as much. Any response to this office action should indicate that all of claims 4-27 are withdrawn as being directed to a non-elected embodiment.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1 remains rejected under 35 U.S.C. 102(b) as being anticipated by Langhjelm et al. (hereinafter Langhjelm). Langhjelm discloses an applicator with a piston comprised of an elongated tubular housing 62 (see Figure 7) having two ends with a generally constant diameter from one end through the other end (viewing Figure 7, wall 64 defines the housing while walls 68, 70 and 76 are not considered part of the housing but are considered part of an applicator portion), an applicator tip 76, 70, 68

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disposed at one sealed end and a piston 66 disposed near a second end with a liquid or viscous substance disposed therebetween and an opening means 74 provided at the location of the applicator tip which will allow the sealed end to be removed to expose the applicator tip wherein the liquid or viscous substance is sealed within the housing and may be extracted through the tip when the piston is urged toward the tip by applying pressure on the housing from an end opposite the substance (see column 2, lines 30-44).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 2 remains rejected under 35 U.S.C. 103(a) as being unpatentable over Langhjelm in view of Zakensberg. Although the opening means in the Langhjelm device is a threaded cap and not a breakable fracture line, as claimed, attention is directed to the Zakensberg reference, which discloses another container having an opening means wherein the opening means is in the form of a fracture line 20 in order to enable the container to be more efficiently formed and opened. Accordingly, it would have obvious to one of ordinary skill in the art at the time the invention was made to replace the threaded cap in the Langhjelm device with such a break-away closure, as taught by

Zakensberg, in order to render the Langhjelm device easier/quicker to open as well as form the device in a more efficient manner.

Claim 3 remains rejected under 35 U.S.C. 103(a) as being unpatentable over Langhjelm in view of Dombroski et al. (hereinafter Dombroski). Although the opening 78 in the Langhjelm device does not include a film thereover, attention is directed to the Dombroski reference, which discloses another container wherein the opening therein is covered with a film 38 in order to render the device tamperproof (see the paragraph bridging columns 1 and 2). Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include such a film over the opening 78 in the Langhjelm device in order to render that device tamperproof.

Response to Arguments

Applicant's arguments filed 3/23/07 have been fully considered but they are not persuasive. The Applicant contends that the Langhjelm reference is not applicable against claim 1 in that this claim defines a tubular housing with a generally constant diameter between the ends while the Langhjelm reference discloses a housing having a flared rearward end and a tapered opposite end. The Applicant is apparently referring to Figures 1-3 of Langhjelm, which does show a flared rearward end, however, as indicated in the previous office action (and repeated above), it is Figure 7 which is being relied on to teach the claimed structure. Clearly the embodiment of Figure 7 does not show a flared rearward end. Further, as discussed supra, since walls 68, 70, and 76 define the claimed "applicator tip" which seals an end of tube 64, tubular wall portion 64

is considered to disclose the claimed tubular housing (see the sentence bridging columns 4 and 5). This wall portion 64 clearly shows two ends with a generally constant diameter therebetween.

Conclusion


This is an RCE of applicant's earlier Application No. 10/681,977. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David J. Walczak whose telephone number is 571-272-4895. The examiner can normally be reached on Mon-Thurs, 6:30- 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Huson Gregory can be reached on 571-272-4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



David J. Walczak
Primary Examiner
Art Unit 3751

DJW
4/9/07